

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21**

**KILLION INDUSTRIES, INC.**

**Employer**

**and**

**Case 21-RC-240098**

**INTERNATIONAL ASSOCIATION OF SHEET  
METAL, AIR, RAIL, AND TRANSPORTATION  
WORKERS, LOCAL UNION NO. 206**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Petitioner seeks to represent a unit of sheet metal workers at the Employer's facility in Vista, California. The Employer contends that an election should be barred under the Fourth Amendment of the U.S. Constitution, prohibiting unreasonable searches, seizures, and intrusion, where the Employer contends that a representative of the Petitioner illegally entered the Employer's premises to conduct organizing activities. The Employer also contends that the Petitioner's showing of interest should be invalidated by the alleged conduct of the Petitioner's representative and by an employee who allegedly engaged in organizing activities in violation of the Employer's work rules. The Region conducted a representation hearing in this case on May 3, 2019. Prior to taking evidence regarding the Employer's contentions, the hearing officer required the Employer to submit an offer or proof regarding the evidence it intended to present in support of its contentions. Pursuant to my instructions following the Employer's offer of proof, the hearing officer did not allow the Employer to present its evidence, as matters which might constitute unfair labor practices and matters pertaining to the showing of interest are not subjects that can be litigated at a representation hearing. I hereby affirm the refusal to allow evidence.

Because I conclude that the unit sought by Petitioner is appropriate for collective bargaining and that a question of representation exists under Section 9(c) of the Act, I am directing an election in this matter.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.<sup>1</sup>

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<sup>1</sup> The parties stipulated as follows: The Employer, Killion Industries, Inc., a California corporation with its principal offices located at 1380 Poinsettia Avenue, Vista, California, and operations located at 2480 Ash Street, Vista, California, the only operations involved herein, is engaged in the manufacture of metal parts, checkstands and

3. The Petitioner is a labor organization as defined in Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As stipulated by the parties, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time sheet metal workers employed by the Employer at its facility currently located at 2480 Ash Street, Vista, California.

**Excluded:** All other employees, carpenters, electricians, refrigeration employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Sheet Metal, Air, Rail, and Transportation Workers, Local Union No. 206.

#### **A. Election Details**

The election will be held on **Friday, May 17, 2019 from 2:00 p.m. to 2:30 p.m. in the break room at the Employer's facility located at 2490 Ash Street, Vista, California.**

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **May 5, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well

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refrigeration. During the past 12 months, a representative period, the Employer purchased and received at its Vista, California facilities goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, May 8, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 6, 2019



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William B. Cowen, Regional Director  
National Labor Relation Board, Region 21  
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